

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15<sup>th</sup> day of September, two thousand six.

PRESENT:

HON. ROBERT D. SACK,  
HON. ROBERT A. KATZMANN,  
HON. REENA RAGGI,  
*Circuit Judges.*

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Wen Min Chen,

*Petitioner,*

v.

No. 06-1649-ag  
NAC

Alberto R. Gonzales, Attorney General,  
*Respondent.*

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FOR PETITIONER: Aleksander Milch, New York, New York.

FOR RESPONDENT: Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, Edmond E. Chang, Maggie J. Schneider, Craig Oswald, Assistant United States Attorneys, Chicago, Illinois.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioner Wen Min Chen, a citizen of the People’s Republic of China, seeks review of a

1 March 29, 2006 order of the BIA affirming the July 16, 2004 decision of Immigration Judge (“IJ”)  
2 Douglas B. Schoppert denying her application for asylum, withholding of removal and relief under  
3 Article 3 of the Convention Against Torture (“CAT”). *In re Wen Min Chen*, No. A 78 015 878  
4 (B.I.A. March 29, 2006), *aff’g* No. A 78 015 878 (Immig. Ct. N.Y. City July 16, 2004). We assume  
5 the parties’ familiarity with the underlying facts and procedural history of the case.

6 Where, as here, the BIA affirms the IJ’s decision without opinion, this Court reviews the  
7 IJ’s decision directly. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). We review the agency’s  
8 factual findings, including adverse credibility determinations, under the substantial evidence  
9 standard, treating them as “conclusive unless any reasonable adjudicator would be compelled to  
10 conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 &  
11 n.7 (2d Cir. 2004). A determination “based on flawed reasoning . . . will not satisfy the substantial  
12 evidence standard,” and the agency’s use of “an inappropriately stringent standard . . . constitutes  
13 *legal*, not factual error.” *Id.*; *Cao He Lin v. U.S. Dep’t of Justice*, 428 F.3d 391, 400 (2d Cir. 2005)  
14 (internal quotation marks omitted).

15 Here, the IJ’s adverse credibility determination was based on the internal inconsistencies  
16 within Chen’s testimony. Substantial evidence supports this finding, where Chen indicated that the  
17 police first warned her to cease practicing Falun Gong in September 2001, then immediately changed  
18 her testimony to indicate that the warning was in December 1999, then changed it again to state that  
19 it had happened December 2001. In addition, Chen testified that she hid at her relative’s home for  
20 about six months beginning in December 2002, which contradicted her testimony that she went into  
21 hiding in December 2001, she was first detained in February 2002, and she left China in June 2002.  
22 Chen also testified that one year had lapsed between the day she was last warned by cadres not to  
23 practice Falun Gong and the day she went into hiding. Later, she testified that this period of time  
24 had been six months.

25 In addition, Chen’s argument that the IJ failed to sufficiently probe her for details about these

1 discrepancies is flawed, where the inconsistencies were dramatic, and where the IJ inquired (1)  
2 whether she was “sure” about the date the police first contacted her, (2) how she could have lived  
3 with her aunt in December 2002 for six months if she left China in June 2002, and (3) how six  
4 months could have elapsed between her last police warning and her decision to go into hiding, where  
5 she testified that both of those events took place in December 2001.

6 The IJ also did not err in finding that the letter from Chen’s father failed to rehabilitate her  
7 testimony, where the letter indicated that the police interrogated and detained Chen and her father in  
8 February 2000, but where Chen testified that those events took place in February 2002. Finally,  
9 because Chen’s testimony was not otherwise credible, the IJ reasonably relied on her lack of  
10 corroborative documents evidencing that she continues to practice Falun Gong in the U.S., which he  
11 viewed as suspicious because she claimed to practice the technique at home and in the park on a  
12 regular basis.

13 Accordingly, because the IJ’s adverse credibility determination is supported by substantial  
14 evidence, we find no reason to overturn the BIA’s order affirming the IJ’s denial of Chen’s  
15 applications for asylum, withholding of removal and relief under the CAT, which were all based on  
16 the same set of operative facts. The petition for review is therefore DENIED. Having completed our  
17 review, any stay of removal that the Court previously granted in this petition is VACATED, and any  
18 pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for  
19 oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure  
20 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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22 FOR THE COURT:  
23 Roseann B. MacKechnie, Clerk  
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25 By: \_\_\_\_\_  
26 Oliva M. George, Deputy Clerk